

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES ANDERSON,

Defendant-Appellant.

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UNPUBLISHED  
December 2, 2003

No. 239071  
Wayne Circuit Court  
LC No. 00-006551-01

Before: Fort Hood, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of possession with intent to deliver less than fifty grams of cocaine. MCL 333.7401(2)(a)(iv). He was sentenced to 13½ to 20 years' imprisonment and appeals as of right. We affirm defendant's conviction, but remand for recalculation of the sentencing guidelines and for resentencing before a different judge.

After an arrest on drug charges, Earl Bowen agreed to act as an informant for police. Bowen arranged to purchase a half kilogram of cocaine. Bowen went to the home of Edna Mumphord, who entered his vehicle. Mumphord ultimately made contact with defendant, who was sitting in a tow truck in a parking lot located north of her home. When Mumphord returned to Bowen's vehicle, a bag containing 362.05 grams of cocaine was found. Police arrested defendant and found, sitting on the front seat, two plastic bags containing 25.65 grams of cocaine. Defendant also had a cellular telephone, a pager, and \$2,905 with him in the truck. A search of defendant's home revealed marijuana, a weapon, and additional cash. Although Bowen had been killed prior to trial, his testimony at an entrapment hearing was presented at trial. The trial court convicted defendant of possession with intent to deliver less than fifty grams of cocaine, but acquitted him of the charge of delivery of 225 grams or more but less than 649 grams of cocaine.

Defendant first alleges that the trial court improperly admitted prior testimony of an unavailable witness pursuant to MRE 804(b)(1). The decision to admit evidence is within a trial court's discretion and is reviewed for an abuse of that discretion. *People v Katt*, 468 Mich 272, 278; 662 NW2d 12 (2003). We cannot conclude that an abuse of discretion occurred in this case. Defendant blanketly asserts that admission of the prior testimony was improper because the motive in developing testimony at trial differs from the motive in developing testimony at the entrapment hearing. However, review of the preserved testimony revealed that thorough cross-

examination designed to attack the credibility of Bowen occurred. Accordingly, this claim of error is without merit.

Defendant next alleges that insufficient evidence to support the intent requirement of the possession with intent to deliver charge was presented. We disagree. A challenge to the sufficiency of the evidence is reviewed de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). “[A] court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.” *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999), quoting *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748, amended 441 Mich 1201 (1992). The trial court may infer intent from all the facts and circumstances of the case. *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998). Inferences from circumstantial evidence are treated just the same as inferences from direct evidence. *Wolfe*, *supra* at 526. The intent to deliver can be inferred from the quantity possessed, the packaging of the drugs, and other circumstances surrounding the possession. The lack of evidence of personal use, such as glass pipes or other drug paraphernalia, is one such circumstance from which the intent to deliver can be inferred. *Id.* at 524-525.

In the present case, there were no glass pipes or other paraphernalia for personal use found on defendant or in his home. Defendant had thousands of dollars in cash on his person and in his home at the time of arrest. Six freezer bags filled with marijuana were found in defendant’s home. The evidence as a whole supports the inferences as determined by the trier of fact. It is the province of the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and the weight to be afforded those inferences. *People v Hardiman*, 466 Mich 417, 430-431; 646 NW2d 158 (2002).

Defendant next alleges that the trial court erred by improperly limiting cross-examination of a witness to preclude evidence of defendant’s employment status. We disagree. A trial court’s limitation of cross-examination is reviewed for an abuse of discretion. *People v Crawford*, 232 Mich App 608, 620; 591 NW2d 669 (1998). After the trial court ruled that the evidence regarding employment would be excluded, defendant did not request the opportunity to make an offer of proof regarding the substance of the excluded testimony. MRE 103(a)(2); *People v Hampton*, 237 Mich App 143, 154; 603 NW2d 270 (1999). Therefore, we cannot determine whether the exclusion of the testimony affected defendant’s substantial rights. MRE 103(a); *Hampton*, *supra*. Additionally, based on the question posed by defense counsel and the colloquy that followed, we cannot conclude that the trial court’s limitation was an abuse of discretion. *Crawford*, *supra*. Specifically, defense counsel asked the officer in charge of the case: “Did you make any inquiry as to whether or not Mr. Anderson [defendant] worked?” After an objection by the prosecutor, defense counsel merely stated, without any offer of proof that the money found in defendant’s home was relevant with regard to the intent to deliver. The trial court noted that defense counsel could argue that the money seized from the home was explained by employment, while the prosecutor would argue that the money was the result of narcotics proceeds. A judge sitting as the trier of fact is presumed to possess an understanding of the law, which allows him to ignore evidentiary errors and decide a case solely on evidence properly admitted at trial. *People v Taylor*, 245 Mich App 293, 305; 628 NW2d 55 (2001). Furthermore, evidence of poverty, reliance on public welfare, unemployment, underemployment or low paying employment is generally inadmissible to demonstrate motive. *People v*

*Henderson*, 408 Mich 56, 66; 289 NW2d 376 (1980). Based on the record available, the trial court properly prevented defense counsel from opening the door to examination of the nature of any employment and the sufficiency of the resources derived from any employment in light of the large sum of money seized.

Lastly, defendant challenges the calculation of the scoring guidelines and alleges that the trial court failed to identify substantial and compelling reasons for the departure based on objective and verifiable factors. We note that defendant raised challenges to the scoring of the guidelines at the hearing regarding his motion for resentencing. However, the trial judge refused to address the scoring challenges, stating that the guidelines did not apply, and in any event, defendant's drug trafficking was a substantial and compelling reason for the departure.<sup>1</sup> The trial judge stated that he would never change the sentence under any circumstances.

Given the certainty of the trial judge's expression of his inability to change his previously expressed views, we conclude that remand to a different judge for examination of the scoring guidelines and resentencing is required. *People v Pillar*, 233 Mich App 267, 271; 590 NW2d 622 (1998). Once the appropriate sentence range is determined, the trial court may determine, by reference to the principle of proportionality, whether substantial and compelling reasons exist to depart from the guidelines. *People v Babcock*, 469 Mich 247, 263-264; 666 NW2d 231 (2003). This Court reviews the trial court's decision to depart from the guidelines range based on substantial and compelling reasons for an abuse of discretion. *Id.* at 265. However, an abuse of discretion, in the context of sentencing determinations, occurs when the trial court chooses an outcome falling outside the principled range of outcomes. *Id.* at 260. This deferential standard is warranted because the trial court is better situated to examine the factual scenario and based on its experience in sentencing. Accordingly, we remand this matter to a different sentencing judge to assess the scoring challenges raised by both the defense and the prosecution and for resentencing in accordance with the provisions of MCL 769.34 and *Babcock*, *supra*.

Affirmed with regard to defendant's conviction, but remanded to a different sentencing judge for calculation of the scoring guidelines and resentencing. We do not retain jurisdiction.

/s/ Karen M. Fort Hood  
/s/ William B. Murphy  
/s/ Janet T. Neff

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<sup>1</sup> The sentencing guidelines as initially scored provided a minimum sentence range of ten to twenty-three months. The minimum sentence imposed was thirteen and a half years.